

**PATENT**

Atty. Docket No. 200313472-1

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/Joseph G. Swan/  
Joseph G. Swan

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

KEMAL GULER, ET AL.

Group Art Unit: 3625

Serial No.: 10/683,985

Examiner: Levine, Adam L.

Filed: October 10, 2003

Conf. No.: 3445

For: METHOD AND SYSTEM FOR  
CONTROLLING FEEDBACK FOR AN  
ONLINE AUCTION

**APPEAL BRIEF**  
**ON APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Mail Stop Appeal Brief - Patent  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

Appellants in the above-captioned patent application appeal the final rejection of claims 11-14, 16-21 and 23-36 set forth in the Office Action mailed August 20, 2007, a Notice of Appeal having been timely filed on November 20, 2007.

**I. REAL PARTY IN INTEREST**

The real party in interest in this application is Hewlett-Packard Development Company, L.P., pursuant to an assignment recorded on October 10, 2003, at reel 014607, frame 0439.

**II. RELATED APPEALS AND INTERFERENCES**

Appellants are not aware of any related appeals or interferences or judicial proceedings.

**III. STATUS OF CLAIMS**

Claims 11-14, 16-21 and 23-36 have been finally rejected and are the subject matter of this appeal. Claims 1-10, 15 and 22 have been canceled, and objection has been made to claim 24 (in addition to its rejection on prior-art grounds). In accordance with 37 C.F.R. § 1.192(c)(9), a copy of the claims involved in this appeal is included in the Claims Appendix attached hereto.

**IV. STATUS OF THE AMENDMENTS**

An Amendment After Final Rejection was filed on October 22, 2007, after the final rejection, in order to address certain formal non-substantive claim rejections and objections. In the Advisory Action issued on November 9, 2007, the Examiner indicated that the claim amendments included therein would be entered and would overcome certain of those claim rejections and objections. Accordingly, the copy of the claims in

the attached Claims Appendix reflects those amendments, and only the remaining claim rejections are addressed herein.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

The present invention concerns systems, methods, programs and techniques for allowing a person or entity that wishes to initiate an auction (an “end-user”) to specify feedback rules regarding, e.g., the type, content and timing of information provided to bidders about the status of the auction. In the preferred embodiments, the user is able to flexibly and dynamically define such feedback rules, e.g., both at the beginning of the auction and then during the course of the auction as well.

Thus, independent claim 11 is directed to a computer readable medium containing executable instructions that when executed by a computer system implement a method that allows selection of a feedback rule for an online auction contemporaneously with an end-user initiating the online auction (e.g., as described at paragraphs [0014]-[0024] and [0034] of the Specification). The feedback rule includes at least one of personalized feedback (e.g., as described at paragraph [0016] of the Specification), conditional feedback (e.g., as described at paragraphs [0019]-[0024] of the Specification) and timing of feedback (e.g., as described at paragraph [0017] and original claim 11 of the Specification).

Independent claim 17 is directed to a computer system having a processor (e.g., as shown by element 104 in Figure 1 of the Specification) operable to execute instructions of an auction program (e.g., as shown by element 111 in Figure 1 of the Specification) and a network interface (e.g., as shown by element 108 in Figure 1 of the Specification) coupled to the processor. The auction program is operable to provide

data to client computers over the network interface for generation of an auction interface (e.g., as described at paragraphs [0015] and [0026] of the Specification), the auction interface in turn permitting an end-user of an online auction to customize feedback of the online auction by selecting a feedback rule (e.g., as described at paragraphs [0014]-[0024] of the Specification). The feedback rule is from the group consisting of feedback timing (e.g., as described at paragraph [0017] of the Specification), personalized feedback (e.g., as described at paragraph [0016] of the Specification), and feedback based on rank (e.g., as described at paragraphs [0019]-[0022] of the Specification).

Independent claim 23 is directed to a computer system that includes means for executing programs and instructions (e.g., as shown by element 104 in Figure 1 of the Specification) operable to execute instructions of an auction program (e.g., as shown by element 111 in Figure 1 of the Specification), as well as means for communicating data to network-attached client computer systems (e.g., as shown by element 108 in Figure 1 of the Specification), with the means for communicating coupled to the means for executing. The auction program is operable to provide data to the client computer systems over the means for communicating operable to generate an auction interface (e.g., as described at paragraphs [0015] and [0026] of the Specification), and the auction interface permits an end-user of an online auction to select a feedback from a pre-defined list of feedback rules (e.g., as described at paragraphs [0037] of the Specification) to use for the online auction (e.g., as described at paragraphs [0014]-[0025] and original claim 23 of the Specification).

Independent claim 25 is directed to a system for controlling an auction. The system includes interface means for providing a user interface (e.g., as shown by

element 112 in Figure 1 of the Specification) through which an end-user may input details for an auction, including feedback rules regarding information provided to bidders about status of the auction (e.g., as described at paragraph [0015] of the Specification). It also includes auction means for carrying out the auction over a network (e.g., as shown by elements 104 and 111 in Figure 1 of the Specification) in accordance with the input details for the auction (e.g., as described at paragraph [0012] of the Specification).

In claims 23-24, the means for executing programs and instructions corresponds, e.g., to element 104 in Figure 1 of the Specification, and the means for communicating data to network-attached client computer systems corresponds, e.g., to element 108 in Figure 1 of the Specification. In claims 25-36, the interface means corresponds, e.g., to element 112 in Figure 1 of the Specification, and the auction means corresponds, e.g., to elements 104 and 111 in Figure 1 of the Specification.

#### **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 11, 14, 16 and 23-36 stand rejected under 35 U.S.C. § 102(b) U.S. Patent Publication No. 2002/0099643 (Abeshouse); and claims 12-13 and 17-21 stand rejected under 35 U.S.C. § 103(a) over Abeshouse in view of U.S. Patent Publication No. 2005/0055299 (Chambers).

## VII. ARGUMENT

### Authority Pertaining to Issues on Appeal

#### Anticipation Rejections Under 35 USC § 102

The requirements for showing anticipation under § 102 are described in M.P.E.P.

§ 2131 as follows:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

With respect to a § 102 rejection, the Federal Circuit also has held that "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920, (Fed. Cir. 1989).

In addition, when inherency is asserted extrinsic evidence must be cited to show that the missing descriptive matter is necessarily present in the thing described in the reference:

To establish inherency, the *extrinsic evidence* [emphasis added] "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 U.S.P.Q.2d 1746, 1749 (Fed. Cir. 1991). "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Id.* at 1269, 20 U.S.P.Q.2d at 1749 (quoting *In re Oelrich*, 666 F.2d 578, 581, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981)).

In re Robertson, (Fed. Cir. 1999) 169 F.3d 743, 745; 49 U.S.P.Q.2d 1949.

Obviousness Rejections Under 35 USC § 103

The Supreme Court has set forth the following general standard with respect to any determination of obviousness:

"Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented."

*Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18, 86 S. Ct. 684, 15 L. Ed. 2d 545 (1966), quoted approvingly by *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (U.S. 2007).

When performing this analysis, all claim limitations must be considered. See, e.g., MPEP § 2143.01. At the same time, the analysis requires a determination as to whether the claimed invention "as a whole" would have been obvious just before the claimed invention was made to person of ordinary skill in the art. See, e.g., MPEP § 2142.

It is noted that, "rejections on obviousness cannot be sustained with mere conclusory statements..." MPEP § 2142, quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), which in turn was quoted approvingly by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1395-97 (2007). In addition, "impermissible hindsight must be avoided and the legal conclusion [regarding obviousness] must be reached on the basis of the facts gleaned from the prior art." MPEP § 2142.

More specifically, "the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a *prima facie* case of obviousness) is more probable than not." MPEP § 2142.

Finally, even where all of a claim's limitations can be found in the prior art, the examiner must provide a convincing reason as to why one of ordinary skill in the art would have been prompted to combine such limitations in the same manner as recited in claim.

"Although common sense directs one to look with care at a patent application that claims as innovation is the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known."

*KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (U.S. 2007).

#### **Rejection Under § 102(b) Over Abeshouse**

##### Claims 11, 12, 14 and 16

Independent claim 11 is directed to a computer readable medium containing executable instructions that when executed by a computer system implement a method that allows selection of a feedback rule for an online auction contemporaneously with an end-user initiating the online auction. The feedback rule includes at least one of personalized feedback, conditional feedback and timing of feedback.

The foregoing combination of features is not disclosed by the applied art. For instance, Abeshouse does not disclose computer-executable instructions that when

executed implement a method allowing selection of a feedback rule for an online auction contemporaneously with an end-user initiating the online auction.

In this regard, Abeshouse discusses systems and methods for conducting an auction. Abeshouse appears to be particularly focused on supplier auctions in which a purchaser sets up an auction among a variety of potential suppliers, and those potential suppliers bid against each other.

With respect to the above-referenced feature of the invention, the Examiner asserts that it is disclosed by Figures 5-16, page 7 ¶¶0080-0083, page 10 ¶0101 and page 20 ¶0172 of Abeshouse. However, the Examiner does not provide any explanation as to how any of these listed portions of Abeshouse allegedly discloses the subject feature of the present invention. Each is addressed as follows.

Figures 5-16 include flowcharts and screenshots depicting various aspects of Abeshouse's technique. Appellants have studied these drawings in detail and are unable to find anything in them that would have disclosed the present feature of computer-executable instructions that when executed implement a method allowing selection of a feedback rule for an online auction contemporaneously with an end-user initiating the online auction.

Page 7 ¶¶0080-0083 of Abeshouse includes some discussion of using "differential market feedback rules", in which the kind of feedback that is provided to a bidder depends upon the bidder's status. However, it says nothing at all about how such differential market feedback rules are put into place, and it certainly does not say anything about a computer-implemented method for permitting selection of a feedback rule contemporaneously with initiating the online auction, as presently recited.

Page 10 ¶0101 of Abeshouse discusses one particular kind of a differential market feedback rule, one in which “access to market feedback is restricted to those bidders 30 who are market leaders.” However, this paragraph also says nothing at all about how such a rule arises.

Page 20 ¶0172 of Abeshouse discusses certain additional examples of differential market feedback rules. Once again, however, it does not at all indicate how such rules are generated and certainly does not say anything about a computer-implemented method for permitting selection of a feedback rule as presently recited.

Thus, while certain portions of Abeshouse appear to talk about providing different feedback to different bidders, and even dynamically adjusting the feedback as the characteristics of the bidders (e.g., their bid positions) change, there is nothing in Abeshouse indicating that a feedback rule can be simply selected through a computer program or the like, as presently recited.

To the contrary, it appears that in Abeshouse the kinds of feedback that are provided during the auction are hard-coded or hard-wired into the system. For example, there are clear references throughout Abeshouse describing the parameters of the auction over which the purchaser (the person or entity who creates the auction in Abeshouse’s supplier auction model) has control, e.g., identifying which potential suppliers will receive invitations to the auction (paragraph [0019] of Abeshouse) and providing a definition of the product or services to be covered by the auction (paragraph [0017] of Abeshouse). However, notably missing from Abeshouse is any indication that the purchaser has control over any feedback rule in the manner presently recited.

As a general matter, it appears that the purchaser in Abeshouse has very little, if any, direct control over the creation of the auction. See, e.g., paragraphs [0017]-[0018] of Abeshouse, in which Abeshouse notes that the purchaser relies on a coordinator to set up the auction.

There is no indication in Abeshouse as to how feedback policies are actually put into effect. However, Abeshouse's need to use a coordinator indicates that the entire auction setup, including putting feedback policies into effect, is a complicated matter, potentially requiring individual coding of the rules for each new auction to be set up

At the very least, Abeshouse does not disclose computer-executable instructions that when executed implement a method allowing selection of a feedback rule for an online auction contemporaneously with an end-user initiating the online auction in a manner that would be required for a § 102 anticipation rejection, in accordance with the requirements for such a rejection set out above.

By providing this feature, the present invention often can enable an end-user to flexibly and dynamically define feedback rules. As a result, e.g., in certain embodiments of the invention various approaches can be easily tried and then modified, if appropriate, based on the collected data.

In response to similar remarks previously made by Appellants, the Examiner argues that "the features upon which applicant relies (i.e., the end-user independently selecting or customizing the feedback rules) are not recited in the rejected claim(s)." However, independent claim 11 clearly recites the above referenced-feature and, as discussed above, that feature is not disclosed anywhere in Abeshouse.

In short, Abeshouse appears to lack any mention of computer-executable instructions that when executed implement a method that allows selection of a feedback rule for an online auction contemporaneously with initiating the online auction. Therefore, it could not have anticipated independent claim 11.

Accordingly, independent claim 11, together with its dependent claims 12, 14 and 16, is believed to be allowable over the applied art.

Claims 23 and 24

Independent claim 23 is directed to a computer system that includes means for executing programs and instructions operable to execute instructions of an auction program, as well as means for communicating data to network-attached client computer systems, with the means for communicating coupled to the means for executing. The auction program is operable to provide data to the client computer systems over the means for communicating operable to generate an auction interface, and the auction interface permits an end-user of an online auction to select a feedback from a pre-defined list of feedback rules to use for the online auction.

The foregoing combination of features is not disclosed by Abeshouse. For instance, Abeshouse is not seen to disclose anything at all about an auction program providing data to a client computer system for generating an auction interface which, in turn, permits an end-user of an online auction to select a feedback from a pre-defined list of feedback rules to use for the online auction.

As noted above, Abeshouse discusses systems and methods for conducting an auction. Abeshouse appears to be particularly focused on supplier auctions in which a

purchaser sets up an auction among a variety of potential suppliers and those potential suppliers bid against each other.

First, the Examiner has not even alleged that Abeshouse discloses the above-referenced auction interface feature of the invention. At most, the Examiner has only alleged that Abeshouse discloses an interface generally, citing Figures 6-8 and 11-16, together with page 18 ¶¶0165, of Abeshouse.

As asserted by the Examiner, Figures 6-8 and 11-16 of Abeshouse do show the various interfaces used by Abeshouse's system. However, none of them includes the presently recited feature in which an auction interface permits an end-user of an online auction to select a feedback from a pre-defined list of feedback rules to use for the online auction.

Page 18 ¶¶0165 of Abeshouse discusses functionality provided to bidders who are permitted to receive feedback in accordance with the feedback rule that is in effect for the subject auction. However, it also says nothing at all about providing an auction interface as presently recited.

Although not entirely clear, the Examiner appears to assert that page 7 ¶¶0080-0083, page 8 ¶¶0089, page 10 ¶¶0101 and page 20 ¶¶0172-0174 of Abeshouse together disclose the other aspects of the above-referenced feature the invention. However, no explanation is provided as to how the present feature allegedly reads on these portions of Abeshouse. Nevertheless, each such portion is addressed as follows.

Page 7 ¶¶0080-0083 of Abeshouse includes a discussion of using "differential market feedback rules", in which the kind of feedback that is provided to a bidder depends upon the bidder's status. However, it says nothing at all about how such

differential market feedback rules are put into place, and it certainly does not say anything about generating an auction interface that permits an end-user of an online auction to select a feedback from a pre-defined list of feedback rules to use for the online auction, as presently recited.

Page 8 ¶¶0089 of Abeshouse discusses the screenshots illustrated in its Figures 6-8 for an auction where "access to market feedback is restricted to those bidders 30 who have submitted at least one bid." Page 10 ¶¶0101 of Abeshouse discusses one particular kind of a differential market feedback rule, one in which "access to market feedback is restricted to those bidders 30 who are market leaders." However, neither paragraph also says anything at all about how its referenced feedback rule arises.

Page 20 ¶¶0172-0174 of Abeshouse discusses certain additional examples of differential market feedback rules, as well as certain bidding rules. However, this portion of Abeshouse also is completely silent as to how such differential market feedback rules are generated and certainly does not say anything about providing data to a client computer system for generating an auction interface which permits an end-user of an online auction to select a feedback from a pre-defined list of feedback rules to use for the online auction, as presently recited.

Thus, while certain portions of Abeshouse appear to talk about providing different feedback to different bidders, and even dynamically adjusting the feedback as the characteristics of the bidders (e.g., their bid positions) change, there is nothing in Abeshouse indicating that a feedback rule can be simply selected from a pre-defined list of feedback rules through a generated auction interface, as presently recited.

To the contrary, it appears that in Abeshouse the kinds of feedback that are provided during the auction are hard-coded or hard-wired into the system. For example, there are clear references throughout Abeshouse describing the parameters of the auction over which the purchaser (the person or entity who creates the auction in Abeshouse's supplier auction model) has control, e.g., identifying which potential suppliers will receive invitations to the auction (paragraph [0019] of Abeshouse) and providing a definition of the product or services to be covered by the auction (paragraph [0017] of Abeshouse). However, notably missing from Abeshouse is any indication that the purchaser has control over any feedback rule in the manner presently recited.

As a general matter, it appears that the purchaser in Abeshouse has very little, if any, direct control over the creation of the auction. See, e.g., paragraphs [0017]-[0018] of Abeshouse, in which Abeshouse notes that the purchaser relies on a coordinator to set up the auction.

There is no indication in Abeshouse as to how feedback policies are actually put into effect. However, Abeshouse's need to use a coordinator indicates that the entire auction setup, including putting feedback policies into effect, is a complicated matter, potentially requiring individual coding of the rules for each new auction to be set up

At the very least, Abeshouse does not disclose providing data to a client computer system for generating an auction interface which permits an end-user of an online auction to select a feedback from a pre-defined list of feedback rules to use for the online auction in a manner that would be required for a § 102 anticipation rejection, in accordance with the requirements for such a rejection set out above.

By providing this feature, the present invention often can enable an end-user to flexibly and dynamically define feedback rules. As a result, e.g., in certain embodiments of the invention various approaches can be easily tried and then modified, if appropriate, based on the collected data.

In response to similar remarks previously made by Appellants, the Examiner argues that "the features upon which applicant relies (i.e., the end-user independently selecting or customizing the feedback rules) are not recited in the rejected claim(s)." However, independent claim 23 clearly recites the above referenced-feature and, as discussed above, that feature is not disclosed anywhere in Abeshouse.

In short, Abeshouse appears to lack any mention of providing data to a client computer system for generating an auction interface which permits an end-user of an online auction to select a feedback from a pre-defined list of feedback rules to use for the online auction. Therefore, it could not have anticipated independent claim 23.

Accordingly, independent claim 23, together with its dependent claim 24, is believed to be allowable over the applied art.

#### Claims 25, 28 and 29

Independent claim 25 is directed to a system for controlling an auction. The system includes interface means for providing a user interface through which an end-user may input details for an auction, including feedback rules regarding information provided to bidders about status of the auction. It also includes auction means for carrying out the auction over a network in accordance with the input details for the auction.

The foregoing combination of features is not disclosed by the applied art. For example, the applied art does not disclose at least the feature of providing a user interface through which an end-user may input details for an auction carried out over a network, with those details including feedback rules regarding information provided to bidders about status of the auction.

As noted above, Abeshouse discusses systems and methods for conducting an auction. Abeshouse appears to be particularly focused on supplier auctions in which a purchaser sets up an auction among a variety of potential suppliers and those potential suppliers bid against each other.

The Examiner has not even alleged that Abeshouse discloses the above-referenced feature of the invention. At most, the Examiner has only alleged that Abeshouse discloses an interface generally, citing Figures 6-8 and 11-16, together with page 18 ¶0165, of Abeshouse.

As asserted by the Examiner, Figures 6-8 and 11-16 of Abeshouse do show the various interfaces used by Abeshouse's system. However, none of them includes the presently recited features. Page 18 ¶0165 of Abeshouse discusses functionality provided to bidders who are permitted to receive feedback in accordance with the feedback rule that is in effect for the subject auction. However, it says nothing at all about providing a user interface through which an end-user may input details for an auction carried out over a network, the details including feedback rules regarding information provided to bidders about status of the auction.

While certain portions of Abeshouse appear to talk about providing different feedback to different bidders, and even dynamically adjusting the feedback as the

characteristics of the bidders (e.g., their bid positions) change, there is nothing in Abeshouse indicating that details for an auction, including feedback rules regarding information provided to bidders about status of the auction, may be input through a provided interface, as presently recited.

To the contrary, it appears that in Abeshouse the kinds of feedback that are provided during the auction are hard-coded or hard-wired into the system. For example, there are clear references throughout Abeshouse describing the parameters of the auction over which the purchaser (the person or entity who creates the auction in Abeshouse's supplier auction model) has control, e.g., identifying which potential suppliers will receive invitations to the auction (paragraph [0019] of Abeshouse) and providing a definition of the product or services to be covered by the auction (paragraph [0017] of Abeshouse). However, notably missing from Abeshouse is any indication that the purchaser has control over any feedback rule in the manner presently recited.

As a general matter, it appears that the purchaser in Abeshouse has very little, if any, direct control over the creation of the auction. See, e.g., paragraphs [0017]-[0018] of Abeshouse, in which Abeshouse notes that the purchaser relies on a coordinator to set up the auction.

There is no indication in Abeshouse as to how feedback policies are actually put into effect. However, Abeshouse's need to use a coordinator indicates that the entire auction setup, including putting feedback policies into effect, is a complicated matter, potentially requiring individual coding of the rules for each new auction to be set up at the very least, Abeshouse does not disclose providing a user interface through which an end-user may input details for an auction carried out over a network, the details

including feedback rules regarding information provided to bidders about status of the auction in a manner that would be required for a § 102 anticipation rejection, in accordance with the requirements for such a rejection set out above.

By providing this feature, the present invention often can enable an end-user to flexibly and dynamically define feedback rules. As a result, e.g., in certain embodiments of the invention various approaches can be easily tried and then modified, if appropriate, based on the collected data. Lacking this feature, Abeshouse could not possibly have anticipated claim 25.

Accordingly, independent claim 25, together with its dependent claims 28 and 29, is believed to be allowable over the applied art.

Claim 26

Claim 26 depends from independent claim 25 (discussed above) and recites the further limitation that the interface means allows the end-user to dynamically customize feedback provided to the bidders during the auction. This additional feature of the invention is not disclosed by the applied art.

The Examiner cites page 7 ¶¶0080-0083 of Abeshouse as allegedly disclosing this feature of the present invention. As noted above, that portion of Abeshouse includes some discussion of using "differential market feedback rules", in which the kind of feedback that is provided to a bidder depends upon the bidder's status. In particular, paragraph [0083] notes that, "the differential market feedback technology dynamically adjusts the feedback visible to each bidder 30 depending on their position in the auction 56 and other factors."

However, that feature is quite different than the presently recited interface means which allows the end-user to dynamically customize feedback provided to the bidders during the auction. This recited feature is not at all disclosed by Abeshouse.

For these additional reasons, claim 26 is believed to be allowable over the applied art.

Claim 27

Claim 27 depends from claim 26 (discussed above) and recites the further limitation that the interface means allows the end-user to dynamically customize timing of the feedback provided to the bidders during the auction. This additional feature of the invention is not disclosed by the applied art.

The Examiner apparently also cites page 7 ¶¶0080-0083 of Abeshouse as allegedly disclosing this feature of the present invention. As noted above, that portion of Abeshouse includes some discussion of using "differential market feedback rules", in which the kind of feedback that is provided to a bidder depends upon the bidder's status. In particular, paragraph [0083] notes that, "the differential market feedback technology dynamically adjusts the feedback visible to each bidder 30 depending on their position in the auction 56 and other factors."

However, that feature is quite different than the presently recited interface means which allows the end-user to dynamically customize timing of the feedback provided to the bidders during the auction. This recited feature is not at all disclosed by Abeshouse.

For these additional reasons, claim 27 is believed to be allowable over the applied art.

Claim 30

Claim 30 depends from independent claim 25 (discussed above) and recites the further limitation that the interface means allows the end-user to select from a menu of pre-assembled feedback rules. This additional feature of the invention is not disclosed by the applied art.

The Examiner apparently cites page 7 ¶¶0080-0083, page 8 ¶0089, page 10 ¶0101 and page 20 ¶¶0172-0174 as allegedly showing this feature of the invention. However, no indication as to where these portions of Abeshouse allegedly show this feature is provided. Appellants have studied them in detail and not able to find anything about an interface means allowing an end-user to select from a menu of pre-assembled feedback rules.

For these additional reasons, claim 30 is believed to be allowable over the applied art.

Claim 31

Claim 31 depends from claim 30 (discussed above) and recites the further limitation that at least one of the pre-assembled feedback rules includes a variable that is specified by the end-user. This additional feature of the invention is not disclosed by the applied art.

In fact, the Examiner has not pointed to anything within Abeshouse that even allegedly shows this feature of the invention.

For these additional reasons, claim 31 is believed to be allowable over the applied art.

Claim 32

Claim 32 depends from claim 31 (discussed above) and recites the further limitation that the variable comprises a bidder's rank in the auction. This additional feature of the invention is not disclosed by the applied art.

In fact, the Examiner has not pointed to anything within Abeshouse that even allegedly shows this feature of the invention.

For these additional reasons, claim 32 is believed to be allowable over the applied art.

Claim 33

Claim 33 depends from independent claim 25 (discussed above) and recites the further limitation that the interface means allows the end-user to assemble new feedback rules by using a scripting language. This additional feature of the invention is not disclosed by the applied art.

In fact, the Examiner has not pointed to anything within Abeshouse that even allegedly shows this feature of the invention.

For these additional reasons, claim 33 is believed to be allowable over the applied art.

Claim 34

Claim 34 depends from independent claim 25 (discussed above) and recites the further limitation that the interface means allows the end-user to specify that a first feedback rule is followed until a pre-specified event occurs, after which a second feedback rule is followed. This additional feature of the invention is not disclosed by the applied art.

In fact, the Examiner has not pointed to anything within Abeshouse that even allegedly shows this feature of the invention.

For these additional reasons, claim 34 is believed to be allowable over the applied art.

Claim 35

Claim 35 depends from independent claim 25 (discussed above) and recites the further limitation that the interface means allows the end-user to modify the feedback rule during the auction. This additional feature of the invention is not disclosed by the applied art.

The Examiner apparently cites page 7 ¶¶0080-0083 of Abeshouse as allegedly disclosing this feature of the present invention. As noted above, that portion of Abeshouse includes some discussion of using "differential market feedback rules", in which the kind of feedback that is provided to a bidder depends upon the bidder's status. In addition, paragraph [0083] notes that, "the differential market feedback technology dynamically adjusts the feedback visible to each bidder 30 depending on their position in the auction 56 and other factors."

However, that feature is quite different than the presently recited interface means which allows the end-user to modify the feedback rule during the auction. This recited feature is not at all disclosed by Abeshouse.

For these additional reasons, claim 35 is believed to be allowable over the applied art.

Claim 36

Claim 36 depends from independent claim 25 (discussed above) and recites the further limitation that the user interface (through which the end-user may input details for the auction, including feedback rules regarding information provided to bidders about status of the auction) is a graphic interface. This additional feature of the invention is not disclosed by the applied art.

In fact, the Examiner has not pointed to anything within Abeshouse that even allegedly shows this feature of the invention.

For these additional reasons, claim 36 is believed to be allowable over the applied art.

**Rejection Under § 103(a) Over Abeshouse in view of Chambers**

Claims 17-21

Independent claim 17 is directed to a computer system having a processor operable to execute instructions of an auction program and a network interface coupled to the processor. The auction program is operable to provide data to client computers over the network interface for generation of an auction interface, the auction interface in turn permitting an end-user of an online auction to customize feedback of the online auction by selecting a feedback rule. The feedback rule is from the group consisting of feedback timing, personalized feedback, and feedback based on rank.

The foregoing combination of features is not disclosed or suggested by the applied art. For example, no permissible combination of Abeshouse and Chambers would have disclosed or suggested at least the feature of an auction interface permitting an end-user of an online auction to customize feedback of the online auction by

selecting a feedback rule from the group consisting of feedback timing, personalized feedback, and feedback based on rank.

As noted above, Abeshouse discusses systems and methods for conducting an auction. Abeshouse appears to be particularly focused on supplier auctions in which a purchaser sets up an auction among a variety of potential suppliers and those potential suppliers bid against each other.

Chambers concerns online auctions and appears to be primarily focused on RFP auctions for obtaining insurance products.

The above-referenced feature of the invention is not addressed in the Examiner's rejection. However, Abeshouse does not appear to say anything at all about an auction interface permitting an end-user of an online auction to customize feedback of the online auction by selecting a feedback rule, and the Examiner has not even alleged that it does. At most, the Examiner has only alleged that Abeshouse discloses an interface generally, citing Figures 6-8 and 11-16, together with page 18 ¶0165, of Abeshouse.

As asserted by the Examiner, Figures 6-8 and 11-16 of Abeshouse do show the various interfaces used by Abeshouse's system. However, none of them includes the presently recited feature. Page 18 ¶0165 of Abeshouse discusses functionality provided to bidders who are permitted to receive feedback in accordance with the feedback rule that is in effect for the subject auction. However, it says nothing at all about an auction interface permitting an end-user of an online auction to customize feedback of the online auction by selecting a feedback rule.

While certain portions of Abeshouse appear to talk about providing different feedback to different bidders, and even dynamically adjusting the feedback as the

characteristics of the bidders (e.g., their bid positions) change, there is nothing in Abeshouse indicating that an end-user of an online auction is able to customize feedback of the online auction by selecting a feedback rule through an auction interface, as presently recited.

Chambers apparently allows a user to modify certain information provided to bidders, but does not say anything at all about an auction interface permitting an end-user of an online auction to customize feedback of the online auction by selecting a feedback rule from the group consisting of feedback timing, personalized feedback, and feedback based on rank.

Lacking this feature of the invention, no permissible combination of Abeshouse and Chambers would have rendered claim 17 obvious. In addition, by failing to even address this limitation of independent claim 17, it is believed that the Examiner has not set forth a *prima facie* showing of obviousness, e.g., as required under MPEP §§ 2106 and 2107.

Accordingly, independent claim 17, together with its dependent claims 18-21, is believed to be allowable over the applied art.

#### Claim 13

Claim 13 depends from independent claim 11 (discussed above) and recites the further limitation of allowing the end user to change selection of feedback rules for the online auction during the online auction. This additional feature of the invention is not disclosed or suggested by the applied art.

The Examiner apparently cites page 7 ¶¶0080-0083 of Abeshouse as allegedly disclosing this feature of the present invention. As noted above, that portion of

Abeshouse includes some discussion of using "differential market feedback rules", in which the kind of feedback that is provided to a bidder depends upon the bidder's status. In addition, paragraph [0083] notes that, "the differential market feedback technology dynamically adjusts the feedback visible to each bidder 30 depending on their position in the auction 56 and other factors."

However, that feature is quite different than the presently recited step of allowing the end user to change selection of feedback rules for the online auction during the online auction. This recited feature is not at all disclosed by Abeshouse. Moreover, the Examiner has not alleged that anything in Chambers would have disclosed or suggested this feature of the invention.

Lacking any such teaching, no permissible combination of Abeshouse and Chambers could have rendered claim 13 obvious.

For these additional reasons, claim 13 is believed to be allowable over the applied art.

#### **VIII. CONCLUDING REMARKS**

As Appellants have shown above, for a number of reasons, nothing in the cited references discloses, teaches, or suggests the invention recited by the claims on appeal. Appellants therefore respectfully submit that the claimed invention is patentably distinct over the applied art.

In view of the foregoing remarks, Appellants respectfully request that the rejection of claims 11-14, 16-21 and 23-36 be reversed and a Notice of Allowance issued.

Respectfully submitted,

**JOSEPH G. SWAN, A PROFESSIONAL CORP.**

Dated: January 19, 2008

By /Joseph G. Swan/  
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**CLAIMS APPENDIX**

Claims on Appeal

1-10 (Canceled)

11. A computer readable medium containing executable instructions that when executed by a computer system implement a method comprising allowing selection of a feedback rule for an online auction contemporaneously with an end-user initiating the online auction, wherein the feedback rule comprises at least one of the group consisting of personalized feedback, conditional feedback and timing of feedback.

12. The computer readable medium as defined in claim 11 wherein allowing selection of the feedback rule for an online auction contemporaneously with an end-user initiating the online auction further comprises allowing the end-user to select at least one feedback rule from the group:

no feedback;

full disclosure;

disclosure of a specified number of leading bids only;

informing a bidder of his rank only if the bidder's rank is among a specified number of leading bids; and

informing a bidder whether a bid submitted by the bidder is among a specified number of leading bids.

13. The computer readable medium as defined in claim 11, the method further comprising allowing the end user to change selection of feedback rules for the online auction during the online auction.

14. The computer readable medium as defined in claim 11 wherein allowing selection of the feedback rule for the online auction contemporaneously with the end-user initiating the online auction further comprises allowing selection of at least one the group:

feedback type rules;  
feedback timing rules; and  
feedback content rules.

15. (Canceled)

16. The computer readable medium as defined in claim 11 wherein the feedback rule further comprises selecting an event tracked by the online auction, wherein occurrence of the event triggers a change of feedback during the online auction.

17. A computer system, comprising:  
a processor operable to execute instructions of an auction program;  
a network interface coupled to said processor;

wherein the auction program is operable to provide data to client computers over the network interface for generation of an auction interface, wherein the auction interface permits an end-user of an online auction to customize feedback of the online auction by selecting a feedback rule, and wherein the feedback rule is from the group consisting of feedback timing, personalized feedback, and feedback based on rank.

18. The computer system as defined in claim 17 wherein the auction program is further adapted to allow the end-user to select a feedback rule from a pre-defined list of feedback rules to use for the online auction.

19. The computer system as defined in claim 18 wherein the feedback rules comprise at least one selected from the group:

feedback type rules;  
feedback timing rules; and  
feedback content rules.

20. The computer system of claim 19 wherein the feedback type rules comprise at least one selected from the group:

anonymous feedback; and  
personalized feedback.

21. The computer system of claim 19 wherein the feedback timing rules comprise at least one selected from the group:

periodic feedback;  
continuous feedback; and  
conditional feedback.

22. (Canceled)

23. A computer system, comprising:  
a means for executing programs and instructions operable to execute  
instructions of an auction program;  
a means for communicating data to network-attached client computer systems,  
the means for communicating coupled to the means for executing; and  
wherein the auction program is operable to provide data to the client computer  
systems over the means for communicating operable to generate an auction interface,  
and wherein the auction interface permits an end-user of an online auction to select a  
feedback from a pre-defined list of feedback rules to use for the online auction.

24. The computer system as defined in claim 23 wherein the auction program  
is further adapted to select a feedback from a pre-defined list of feedback rules based  
on auction details provided by the end-user.

25. A system for controlling an auction, comprising:  
interface means for providing a user interface through which an end-user may  
input details for an auction, including feedback rules regarding information provided to  
bidders about status of the auction; and

auction means for carrying out the auction over a network in accordance with the input details for the auction.

26. A system according to claim 25 wherein the interface means allows the end-user to dynamically customize feedback provided to the bidders during the auction.

27. A system according to claim 26 wherein the interface means allows the end-user to dynamically customize timing of the feedback provided to the bidders during the auction.

28. A system according to claim 25 wherein the details for the auction also include start time of the auction, end time of the auction and details regarding an item to be auctioned.

29. A system according to claim 25 wherein the feedback rules include a rule based on a bidder's rank in the auction.

30. A system according to claim 25 wherein the interface means allows the end-user to select from a menu of pre-assembled feedback rules.

31. A system according to claim 30 wherein at least one of the pre-assembled feedback rules includes a variable that is specified by the end-user.

32. A system according to claim 31 wherein the variable comprises a bidder's rank in the auction.

33. A system according to claim 25 wherein the interface means allows the end-user to assemble new feedback rules by using a scripting language.

34. A system according to claim 25 wherein the interface means allows the end-user to specify that a first feedback rule is followed until a pre-specified event occurs, after which a second feedback rule is followed.

35. A system according to claim 25 wherein the interface means allows the end-user to modify the feedback rule during the auction.

36. A system according to claim 25 wherein the user interface is a graphic interface.

**EVIDENCE APPENDIX**

None.

**RELATED PROCEEDINGS APPENDIX**

None.